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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

~~Nos. 794, 795, 796, 797~~
32, 33, 34, 35

JAMES R. HOFFA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

CRIMINAL COURTS BAR ASSOCIATION
(OF LOS ANGELES COUNTY),

Amicus Curiae.

Petition for Leave to File a Brief Amicus Curiae and Brief in Support of Petition for Writ of Certiorari

Criminal Courts Bar Association
(of Los Angeles County)

By Morris Lavine
215 West Seventh Street
Los Angeles, California 90014

Attorney

Jeffries Banknote Company, Los Angeles — MA 7-9514

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Petition for Leave to File a Brief Amicus Curiae and Brief in Support of Petition for Writ of Certiorari

Comes now the Criminal Courts Bar Association of Los Angeles County and petitions this Honorable Court for leave to file a brief amicus curiae on behalf of James R. Hoffa in the above entitled case. (See Appendix A).

Consent of the petitioner Hoffa by his attorney has been received by the Criminal Courts Bar Association. (See Appendix B.) Request has been made to the office of the Solicitor General, which has not given its consent to the filing of the petition amicus curiae.

Therefore, because of the important questions of criminal law involved, and not fully covered in petitions for certiorari now on file, which we believe require the supervisory power of the Court over criminal justice, we petition the Court to consider the matters which we seek to present.

Jurisdiction

Jurisdiction is conferred by Rule 42 (1)(3), Rules for the Supreme Court of the United States.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statutes and constitutional provisions involved herein are: Title 18, Sections 2(a) and 2(b), U.S. Codes; and the Fourth, Fifth and Sixth Amendments to the United States Constitution, all of which are set forth in Appendix C hereto.

QUESTIONS PRESENTED

The Criminal Courts Bar Association of Los Angeles County, consisting of lawyers who practice criminal law, are vitally interested in some of the matters which are before the Court in this case, and particularly in the interests of all lawyers practicing criminal law throughout the country, believe that the matters presented hereinafter require a different and fuller presentation than that presented by the petition on file, to-wit:

1. Whether a defendant's rights under the Fourth Amendment to the Constitution of the United States, protecting his person from unlawful search and seizure, is violated by the taking of pictures of his person and of his attorneys' person without his or their consent, and by his being followed, observed, photographed and surveilled by special agents of the FBI and whether the taking of photographs of the defendant, his co-defendants and their attorneys, without their permission, knowledge or consent and the reporting of their movements and activities throughout preparations for and during trial constituted

a violation of the Fourth Amendment which provides that "The right of the people to be secure in their *persons* . . . and effects, against unreasonable searches and seizures, shall not be violated, . . ."

2. Whether such surveillance, intrusion, observation, and reporting prior to and during the course of a trial destroys the effective right of counsel guaranteed by the Sixth and Fifth Amendments to the Constitution of the United States. *Massiah v. United States,* 377 US 201; *Powell v. Alabama,* 287 US 45, 77 L.ed. 158. *Coplon v. United States,* 191 F(2) 749; *Caldwell v. United States,* 205 Fed(2) 879.

3. Whether the secret planting of a spy-informer in the midst of a defendant and his counsel, during the earlier trial, later to become the government's principal witness, and the use of his testimony thus obtained, constitutes a violation of the Fourth, Fifth and Sixth Amendments to the Constitution of the United States and, in effect, turns court proceedings into a police state such as this country disapproves and condemns. See: *Irvine v. California,* 347 US 128, 137, 98 L.ed. 561; *Mapp v. Ohio,* 367 US 643, 6 L.ed.2d 1081; *Massiah v. United States,* 377 US 201. *Lisenba v. California,* 314 US 219; *Peo. v. Furnish,* 47 Cal.Rep. 387.

4. Whether a pleading which charges aiding and abetting in an alleged bribery trial of a juror, under Section 2(a) of Title 18, is a sufficient pleading to convict a person who is tried but not charged with a violation of Title 18, Section 2(b), and whether such conviction is a denial of due process of law guaranteed by the Fifth Amendment to the Constitution of the United States. *Cole v. Arkansas,* 333 US 196.

5. Whether a trial conducted on the theory of a conspiracy, which charge of conspiracy has been removed from the indictment, is a violation of due process of law guaranteed by the Fifth Amendment to the Constitution of the United States under the doctrine of *Cole v. Arkansas*, 333 US 196, and whether such a trial on a charge not made by the indictment but on which the court gives the instructions as though it were still in the indictment, raises the case to constitutional proportions of denial of due process of law which this Court should re-examine in the light of its own supervision over criminal justice and invasions of constitutional rights. *Cole v. Arkansas*, 333 US 196; *Garner v. Louisiana*, 368 US 157; *Thompson v. Louisville*, 362 US 199; *DeJonge v. Oregon*, 299 US 353; *Russell v. United States*, 369 US 749, 8 L.ed.2d 240, 245.

6. Whether the evidence is sufficient to convict a defendant and find him guilty merely because he allegedly "had a stake in the venture" and whether such interest in a stake in the venture is sufficient proof of guilt beyond a reasonable doubt, as constitutes the requirement in United States courts before a verdict of guilty can be reached. *Coffin v. United States*, 162 US 664, 40 L.ed. 1109.

7. What quantity of evidence is necessary before the presumption of innocence with which a defendant is clothed in a criminal case is overcome and whether that quantity of evidence was ever attained in this case as to the defendant Hoffa.

8. Whether the "selector" system of nominating prospective jurors for the grand and petit juries violates

the Fifth Amendment to the Constitution of the United States.

9. Whether this Court should set up standards of jury selection.

10. Whether the joinder of the defendant Hoffa, who was in a different classification than the other defendants, denied fair trial when he was denied a severance from his joinder with the codefendants in this trial, and should severance of the trial be governed by principles now announced in *People v. Aranda,* (California) 407 P.2d 265.

Each of these questions presents vital and important questions calling for the supervisory power of this Court in criminal justice. As stated in *Olmstead v. United States* by Mr. Justice Brandeis, 277 US 438, 485, "Our government is a potent, the omnipresent teacher".

WHEREFORE, the Criminal Courts Bar Association respectfully petitions this Honorable Court for leave to file a brief amicus curiae and to have this Court pass on each and all of these highly important questions of criminal law in its supervisory capacity and in consideration of great and important questions of criminal justice under the standards of the United States of America.

Respectfully submitted,

THE CRIMINAL COURTS BAR ASSOCIATION
(OF LOS ANGELES COUNTY)

by MORRIS LAVINE,
Attorney